

Application of Criminal Law Actors Spreading hate speech through social media based on Act Number 19 of 2016 concerning Information and Electronic Transactions (ITE)

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Abstract. Technological developments are not only in the form of positive impacts, but also negative impacts, criminal acts of contempt or hate speech, and dissemination of information on social media aimed at inciting hatred or animosity between certain individuals and/or groups of people based on over ethnicity, religion, race and class. The purpose of this study was to determine the application of material criminal law against the perpetrators of the dissemination of hate speech through social media in decision Number 38/Pid.Sus/2018/PN-Bau Smelling about spreading hate speech through social media. This research is a qualitative normative law research. Source of data comes from primary data in the form of legislation, secondary data and tertiary data. The results showed that (1) The application of criminal law against the perpetrators of criminal acts spreading hate speech through social media in case No. 38/Pid.Sus/2018/PN Bau, in the case of the writer who discussed this the criminal provisions of Article 45 A paragraph (2) jo. Article 28 paragraph (2) of the Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to the Law of the Republic of Indonesia Number 11 of 2008 concerning Information and Electronic Transactions. Based on the indictment, the demands of the Public Prosecutor and the court's decision; (2) Judge's Considerations in Imposing Criminal Sanctions Against Actors spreading hate speech through social media in case number 38/Pid.Sus/2018/PN Bau based on consideration of legal facts include witness statements, defendant statements and evidence, then the judge considers juridical aspects (legal certainty), sociological value (expediency) and philosophical (justice).

Keywords: Criminalization, Hate Speech, Social Media.

1. Introduction

Legal issues that are often encountered are when related to the delivery of information, communication and/or data electronically, especially in terms of evidence and matters relating to legal actions carried out through the electronic system. As a result of such developments, then gradually, information technology by itself has also changed the behavior of people from human civilization globally.

The current era of globalization, developing various aspects of the use of social media and online news sites that tend to increase from year to year and cause new phenomena. Everyone is free to express anything through their social media

accounts. Or even the news on news sites are easily shared on social media and can then be commented on by other netizens. Even now in the online news site also prepared a comment room for readers. With the existence of article 28 paragraph (2) of Law Number 11 Year 2008 concerning Information and Electronic Transactions which states: "Everyone intentionally and without the right to disseminate information intended to incite hatred or hostility of certain individuals and/or groups of people based on ethnicity, religion, race, and intergroup.

Article 45A paragraph (2) reads: "every person who fulfills the elements referred to in article 28 paragraph (1) or paragraph (2) shall be punished with a maximum imprisonment of 6 (six) years and/or a maximum fine of 1.000.000.000 (one billion rupiah). In the term of the offense listed in article 310 of the Criminal Procedure Code paragraph (1) reads: "anyone who intentionally damages the honor or good name of a person by accusing him of doing something with a real intention will the spread of the accusation, is punished for insulting, with a maximum of nine months imprisonment or a maximum fine of Rp.4.500. Said to be a general term in describing criminal acts against honor.

Defamation cases that fall into the realm of hate speech that results in criminal reporting are often carried out by those who feel disadvantaged by haters (followers of social networks but with comments that bring down even insult) using the articles in the Act Law on Information and Electronic Transactions and the Criminal Code.

As the case of Iwan Hasnawi on Thursday, January 4, 2018 at his home located at Wakaaka Street, Wameo Village, Batupoaro District, Baubau City, intentionally and without the right to disseminate information intended to incite hatred or hostility of certain individuals and/or community groups based on ethnic groups. , religion, race, and between groups, Iwan Hasnawi uses his cellphone, opens and enters Facebook social media and sees posts uploaded by Amiruddin Ena Amir's account on Thursday, January 4, 2018 at 23.30 Wita that read "Jambret and his motorbike round the round battered in a mass at the intersection of the Betoambari sub-district office. The victim of her snatching is a woman. Fortunately the victim chased and shouted. So that the young man at the crime scene detained the hamster and fell. Almost the life of the hamster disappears if it is not immediately secured ", which has been commented on by several people, then Iwan Hasnawi joined in commenting on the post by writing the phrase "the most Lipu that snatched "then the article was sent / uploaded in the comment column so that the writing with the most sentence Lipu people whose snatches are scattered and can be seen and read by people who access, meaning he writes the most Lipu people whose snatches aim to accuse the snipers are Lipu people, while the defendant is not an authorized party and he does it without permission from the parties anywhere so that the writing makes the Lipu people offended and objected.

Based on the description above, encouraging the curiosity of the writer to study and analyze more deeply the application of criminal law about criminal acts of contempt through social media by raising the title The Application of the Criminal Law Actors Spread Hate Speech Through Social Media Based on Law Number 19 Year 2016 Concerning Changes to the Law Law Number 11 Year 2008 Regarding Information and Electronic Transactions (IET) (Case Study of Court Decision Number 38/Pid.Sus/2018/PN-Bau).

Based on the background description above, the authors formulate the problem as follows: (1) How is the application of criminal law to the perpetrators of hate speech dissemination through social media in the decision No. 38/Pid.Sus/2018/PN-Bau ?; (2) What are the judges' considerations in passing verdict Number 38/Pid.Sus/2018/ PN-Bau about the spread of hate speech through social media?

2. Literature Review

Criminal liability in foreign terms is called *teoekenbaardheid* or criminal responsibility which leads to the criminalization of the offender with a view to determining whether someone is accused or the suspect is responsible or a criminal act that occurs or not [1].

The Supreme Court of the Republic of Indonesia as the highest body of judicial authority which oversees 4 (four) judicial bodies below, namely the general court, religious court, military court, and state administration court, has determined that the judge's decision must consider all aspects that are juridical, philosophical and sociological, so that justice to be achieved, realized, and accountable in a judge's decision is justice that is oriented to legal justice, moral justice, and social justice (social justice) [2].

Social Media is a channel or means of social interaction online in cyberspace (internet). The users of social media communicate interact by sending messages, sharing and building networks [3].

Some previous studies discuss hate speech set out in the Indonesian Police Chief Regulation Number. SE/6/X/2015 concerning Handling of Hate Speech [4], besides that it examines the same thing but in a different perspective in this case is the perspective of Human Rights [5]. There are also those who examine regulation and enforcement provisions for incitement to racial hatred, and crimes motivated by sara issues in Western Europe and the United States [6]. It seems that blasphemy is a specialty with insults. It is seen that defamation is part of humiliation [7].

The point of contact of hate speech in the framework of Human Rights lies in two rights discourse, namely: a) freedom of religion or belief; and b) freedom of expression and opinion, c) protection of race and ethnicity. Through the International Covenant on Civil and Political Rights and a number of documents other internationally, the global community has agreed boundaries both rights, so that restrictions on a right (expression and opinion) to protect certain rights (freedom of religion) should not be seen in a dichotomous framework [8]. For the sake of maintaining the right balance, between religious rights or belief on the one hand, the right to expression on the other, and prevent discrimination, hostility and violence with racial, ethnic and religious reasons, hate speech must include, at least, five stages of trial or test. This trial aims to assess whether an action and / or statement is included in hate speech category or not [5].

3. Methods

This research is a qualitative normative law research. The research method in this paper is normative juried, which views the law as a binding regulation, refers to legal norms as outlined in laws and regulations, legal principles, legal history, and jurisprudence. The approach in the normative juridical method uses a statutory

approach, a case approach, and a historical approach. Normative legal research aims to produce arguments, theories or concepts as prescriptions for solving problems [9]. The location of this research is in the Baubau District Court and the research approach in writing this law is to use the law approach and case study. Sources of data in this study are primary data obtained directly from research in the field and secondary data collected from library materials and documents that support this research [10]. In this study, legal issues will be analyzed with deductive logic, namely the research sources obtained in this study by conducting an inventory as well as reviewing the study of literature studies, legislation and documents that can help interpret relevant norms, then the source of the research is processed and analyzed to answer the problems studied. The last step is to draw conclusions from the sources of research that are processed, so that in the end it can be clearly known.

4. Results and Discussion

4.2. Judge's Consideration in Dropping Decision Number 38/Pid.Sus/2018/PN-Bau About Spread of Hate Speech through Social Media

4.2.1 Consideration of Legal Facts

a. Testimony of witnesses

1. Irwan Bin La Dai, under oath basically explains as follows:

- a) That the Witness was brought before this trial in connection with the issue of the Defendant's comments on Facebook which said that "the most Lipu people snatched it up"
- b) That the incident occurred on Thursday 4 January 2018 around 23.30 WITA;
- c) Whereas initially there was a mugging problem in front of SMA 2, where the culprit ran to the Lipu section, which at the time the motorcycle for the mugger fell down so that the snatcher was captured by the mob in front of the Betoambari Sub-District office in Lipu area, the incident was posted on Facebook by an account Facebook Amiruddin Ena Amir said "Jambret and his motorbike were beaten up during the intersection of the Betoambari Sub-district office. The victim of her snatching is a woman. Fortunately sikorban chased and shouted. So that the young man at the crime scene (TKP) detained the hamster and fell. Nearly the life of the hamster disappears if it is not immediately secured "and the post received many comments including the defendant's comment which said that" most people Lipu snatched it ";
- d) That the witness knew the owner of the Amiruddin Ena Amir facebook account, that is a Lipu person;
- e) That the Defendant commented on Amiruddin Ena Amir's post by saying that "most Lipu people snatched it up" then the Defendant's comments were screenshot and consumed as a consumption item in the Lipu harmony group called Saliwu Nusantara Bersatu then conducted negotiations with an agreement reported to the police;
- f) That the Witness knew of the Defendant's account on Facebook named Iwan Ladosa;

- g) That the witness had never met the defendant when the witness was examined at the police;
- h) That the reason the witness reported the defendant was because all this time there had been a bad incident, definitely the Lipu Katobengke people were labeled, so that after this event we agreed to provide a deterrent effect and lessons to all Baubau residents that we also had the right to be respected;
- i) That the perpetrator of the snatch is not a Lipu person;
- j) That the response of members of the Saliwu Nusantara Bersatu Group to the Defendant's comments was offended;
- k) That the Witness had never met the Defendant;
- l) That the Witness did not know whether the Defendant ever apologized for the Defendant's comments;
- m) That Lipu is one of the tribes in Baubau;
- n) That the witness as a Lipu youth forgave the actions of the Defendant;
- o) That as far as witnesses are concerned, the screenshot to the Salim Nusantara Bersatu group is one of the members of the Saliwu Nusantara Bersatu Group who is friends with Amirudin Ena;
- p) That Amirudin Ena was not yet included in the United Saliwu Nusantara Group;

With regard to witness statements, the Defendant gave an opinion that he did not object.

2. Andre bin La Mane, under oath basically explains as follows: "That the Witness was brought before this trial in connection with the matter of the Defendant insulting the good name of Lipu village";
 - a) That the incident occurred on Thursday 4 January 2018 around 23.30 WITA;
 - b) Whereas initially there was a mugging problem on Betoambari Street where the culprit ran to the Lipu section, which at the time the motorbike of the mugger fell down so that the snatcher was captured by the mob in front of the Betoambari Sub-District office in Lipu area, the incident was posted on Facebook by the Facebook account Amiruddin Ena Amir by saying "Jambret and his motorbike was battered at the end of the section at the intersection of the Betoambari Sub-district office. The victim of the snatching was a woman, fortunately the victim chased and shouted, so that the young man at the crime scene held the hamster and fell. Nearly the hamster's life disappears if it is not immediately secured "and the post received many comments including the defendant's comment that said that" most people Lipu snatched it ";
 - c) That the Witness also commented by saying "it was not the Lipu culprit";
 - d) That there was another comment written by the Defendant besides "the most Lipu person who snatched" that is "just kill the jamret"
 - e) That the witness knew the owner of the Amiruddin Ena Amir facebook account, that is a Lipu person;
 - f) That the witness is friends with Amiruddin Ena on Facebook;
 - g) That the person reporting the matter to the police was a witness friend named Iwan;

- h) That the witness is a Lipu person;
- i) That the witness was offended by the Defendant's comments;
- j) That the Witness did not know the reason the Defendant commented in that way;
- k) That the Witness had never met the Defendant;
- l) That Lipu is one of the tribes in Baubau;
- m) That the Defendant's actions, witnesses as young Lipu forgave the Defendant's actions.

With regard to witness statements, the Defendant stated that he justified and did not object.

3. Amiruddin Ena Alias Amir Bin La Ena, is sworn in to give testimony in court in principle as follows:

- a) That the Witness was brought before this trial in connection with the issue of the Defendant's comments on Facebook which said that "most Lipu people snatched it up";
- b) That the incident occurred on Thursday 4 January 2018 at around 23.30 East Indonesian Time;
- c) Whereas initially there was a mugging problem near the witness's house where the culprit fled to the Lipu section, at which time the motorcyclist of the mugger fell down so that the snatcher was arrested by a mob in front of the Betoambari Sub-District office in Lipu, on which the witness then posted on Facebook saying "The robe and the motorbike were battered at the time of the intersection of the Betoambari sub-district office. The victim of the snatching was a woman, fortunately the victim chased and shouted, so that the young man at the crime scene held the hamster and fell. Nearly the hamster's life disappears if it is not immediately secured "and the post received many comments including the defendant's comment that said that" most people Lipu snatched it ";
- d) That the witness who owns the Facebook account is Amiruddin Ena Amir;
- e) That the Defendant commented on the witness' post by saying that "most Lipu people snatched it up";
- f) That the witness knew that the Defendant who commented on the status of the witness knew from the Defendant's account on Facebook named Iwan Ladosa;
- g) That the witness replied to the Defendant's comment that the perpetrator was not a Lipu person;
- h) That it was not the witness who reported the Defendant's actions to the police;
- i) That the witness is a Lipu person and with the Defendant's comments initially the witness did not really question, but suddenly there was a report so that the witness was then examined because the witness posted the writing
- j) That the Witness did not know the reason the Defendant commented in that way;
- k) That the Witness had never met the Defendant;

- l) That that night the witness did not find out who the Iwan Ladosa account holder was;

Regarding witness statements, the Defendant confirmed and did not object.

4. Defendant's Statement. Defendant Iwan Hasnawi Alias Moris Bin Hasnawi (deceased), which basically was as follows:

- a) That it was true that the Defendant had commented on Amiruddin Ena's post on Facebook by saying that "most people Lipu snatched it up";
- b) That the incident occurred on Thursday 4 January 2018 around 23.30 WITA at the Defendant's house on Jalan Wakangka, Wameo Village, Batupoaro District, Baubau City;
- c) Whereas the Defendant initially saw a post on Facebook by the Facebook account Amiruddin Amena Amir by saying "Jambret and his motorbike were battered during the intersection of the Betoambari Sub-District Office. The victim of her snatching is a woman. Fortunately sikorban chased and shouted. So that the young man at the crime scene held the hamster and fell. Nearly the life of the hamster disappears if it is not immediately secured" and the post received many comments including the Defendant also commenting that "most people Lipu snatched it";
- d) That there was another comment of the Defendant besides "the most Lipu person who snatched it up" that is "just kill the jamret";
- e) That the defendant's Facebook account name is Iwan Ladosa;
- f) That the instrument used by the Defendant to access Facebook is Samsung J2 Prime gold color with IMEI number (1): 354617/08/681761/9, IMEI (2): 354618/08/681761/7; Facebook social media accounts with access to Email: iwanbuton2015@gmail.com and telephone number 081245683456 with password: 858201, and the Facebook domain name "Iwan Ladosa";
- g) That the Defendant confirmed the evidence presented before the trial;
- h) That the Defendant was only a spontaneous comment and did not mean anything;
- i) That the Defendant was not friends with Amiruddin Ena but could see and comment on his post;
- j) That according to the Defendant on the Defendant's comments the Lipu person was offended but there was no intentional element of the Defendant writing such comments;
- k) That the Defendant has never been convicted in another case;

That the accused was sorry and promised not to repeat this act again

5. Evidence. Whereas the Public Prosecutor submitted the following evidence:

- 1) 1 (one) unit of Samsung J2 Prime Gold Color with IMEI number (1) 345617/08/681761/9, IMEI 2: 345618/08/681761/7;
- 2) Facebook social media accounts with Email access iwanbuton2015@gmail.com and telephone number 081245683456 with password/password 858201 and the Iwan Ladosa domain name;
- 3) 1 (one) Print Out status sheet with the Amiruddin Ena Amir domain name;
- 4) 1 (one) print out status sheet with the domain name Iwan Ladosa;

4.2.2 Author Analysis

The Supreme Court of the Republic of Indonesia as the highest body of judicial power in charge of 4 (four) judicial bodies below, namely the general court, religious court, military court, and state administration court, has determined that judges' decisions must consider all aspects that are juridical, philosophical and sociological [2].

1. Judicial Aspect Considerations

The point is that the judge bases his decision on formal statutory provisions. Judges are legally prohibited from imposing the crime except if with at least two legal pieces of evidence, so that the judge obtains confidence that a crime did actually occur and the defendant is guilty of committing it. The criminal act committed by Defendant Iwan Hasnawi Alias Moris Bin Hasnawi is a proven and convincing crime for the Panel of Judges to sentence the defendant in accordance with the crime "intentionally and without the right to spread information intended to incite hatred or hostility of individuals and or groups certain communities based on ethnicity, racial and intergroup religion", Article 45A paragraph (2) jo Article 28 paragraph (2) of the Republic of Indonesia Law No. 19 of 2016 concerning Amendments to the Law of the Republic of Indonesia Number 11 of 2008 about Information and Electronic Transactions. Sehingga The defendant must be sentenced to criminal.

2. Philosophical aspects considerations

The point is that the judge considers that the criminal sentence handed down to the defendant is an attempt to improve the defendant's behavior through the criminal process. This means that the philosophy of punishment is the fostering of the perpetrators of crimes so that after the convicts leave prison, they will be able to improve themselves and not commit crimes again. Defendant Iwan Hasnawi Alias Moris Bin Hasnawi was prosecuted by the public prosecutor with a prison sentence of 1 (one) year in prison and paid a fine of Rp. 2.000.000 (two million rupiah) and if the fine is not paid, it will be replaced with imprisonment for 6 (six) months.

Based on the prosecutor's claim, the Defendant principally stated that he requested the relief of the sentence on the grounds that the Defendant was the backbone of the family and the Defendant pleaded guilty and promised not to repeat it. Then the representatives of the Lipu youth had forgiven the Defendant's actions.

3. Consideration of Sociological aspects

It means that the judge in imposing a crime is based on the social background of the defendant and noting that the sentence imposed has benefits for the community. The Defendant's actions have made the Lipu people feel offended. The Defendant's actions can trigger misunderstandings and trigger public unrest. The defendant is legally proven to have violated Article 45A paragraph (2) with a maximum of 6 (six) years imprisonment and/or a maximum fine of Rp1.000.000.000.00 (one billion rupiah). Whereas the public prosecutor's suit demanded the Defendant with a prison sentence of 1 (one) year in prison and pay a fine of Rp. 2,000,000 (two million rupiah) and if the fine is not paid, it will be replaced with imprisonment for 6 (six) months.

Based on the description above, the author is of the opinion that based on consideration of the juridical, philosophical and sociological aspects of the defendant, the defendant has been given a lighter sentence than the demand of the public prosecutor with a sentence of imprisonment for 6 (six) months.

5. Conclusion

Based on the description above, the authors draw the following conclusions: (1) The application of criminal law against the perpetrators of criminal acts spreading hate speech through social media in case No. 38/Pid.Sus/2018/PN-Bau, in the case of the writer who discussed this, the criminal provisions of Article 45 A paragraph (2) jo. Article 28 paragraph (2) of the Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to the Law of the Republic of Indonesia Number 11 of 2008 concerning Information and Electronic Transactions. Based on the indictment, the demands of the Public Prosecutor and the court's decision; (2) Judge's Considerations in Imposing Criminal Sanctions Against Actors spreading hate speech through social media in case number 38 / Pid.Sus / 2018 / PN Bau based on consideration of legal facts include witness statements, defendant statements and evidence, then the judge considers juridical aspects (legal certainty), sociological value (expediency) and philosophical (justice).

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